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### URGENCY OF ESTABLISHING LOKPAL IN INDIA; LOKPAL VITALITY IN DEMOCRACY-DEVICE FOR CURBING ADMINISTRATIVE LAWLESSNESS

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#### ABSTRACT

Corruption is a complex issue that is embedded in bureaucratic rigidity and issues of economic access and political power, in this sense the state is the main promoter of corruption it cannot be reduced to a question of morality alone and the existing devices for check on elected and administrative officials have not been effective, as growing instances of corruption cases suggest, and existing CVC- central vigilance commission is designed to inquire into allegations of corruption and the CBI, the premier investigation agency of the country functions under the supervision of the ministry of personnel public grievances (under the prime minister) and it is therefore not immune from political pressure during investigation indeed the lack of independence and professionalism of CBI often has been castigated by the supreme court in recent times all these have necessitated the creation of Lokpal with its own investigating team in earliest possible occasion. There is revolution in india, an anti-corruption wave is growing within Indian civil society, in recent years people from all have said: enough is enough and each in their own way doing something about it some are taking to the street as we had seen the Jan Lokpal movement in the leadership of Anna Hazare and his team has really awakened the whole nation about administrative lawlessness and they demanded their suggestions to be incorporated in Lokpal bill and their endeavor to have democratic way of life has received nationwide support, there are others who are combating with this by using the courts, others have turned to the media, but still we need specific measures to control mounting corruption in all sector, strong and stringent laws need to be given tooth and power which gives no room for the guilty to escape firm and strong steps are needed in implementation of LOKPAL.

#### KEYWORDS

Implementation of Lokpal and Administrative lawlessness.

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#### INTRODUCTION

In modern times two tendencies have become manifest in all democratic countries first- large powers have been conferred on administration, with the result that have a huge administrative machinery having vast discretionary powers have come into existence Second-a feeling has arisen in the public

mind that vesting of such vast powers in the administration has generated possibilities and opportunities of abuse and misuse of powers by administrative functionaries resulting in mal administration and corruption, and mal administration impacts on smooth functioning of public office and work gets hampered and delay in completion of proper work causes unnecessary expenses on both public and government on the other hand corruption is a complex issue that is embedded in bureaucratic rigidity, according to oxford dictionary the word 'corruption' means dishonest or illegal behavior, especially of people in authority again the word 'corrupt' denotes those who are willing to use their power to do dishonest or illegal things in return of money or to get an advantage, it implies the exploitation of one's own interest at the cost of public good due to uninterrupted rise of corruption in india, there is a paramount need of an institution to check the growth of administrative lawlessness and corruption which is deteriorating the vital organs of the nation and the society as a whole. The main legal frame works addressing corruption in india are the prevention of corruption act and lokpal and lokayuktas act.

The Prevention of corruption Act 1988 is a legislation. Its main thrust is to prohibit public servant from accepting or soliciting illegal gratification in the discharge of their official function. This Act was intended to make effective provisions for Prevention of bribery and corruption amongst the public servant.

Lokpal and lokayukta Act 2013 aims to prevent and control corruption through the setting up of an independent and empowered body at the central level and state level, which receives complaints relating to corruption against public servants and ensures that there are properly investigated and where warranted effectively prosecuted, all this is envisaged in time bound manner with the help of special courts set up for the purpose, the act also makes it incumbent each state to pass within a year a law setting up a body of lokayuktas at state level but leaves it to the states to work out the details there are as many as 17 states where the institution of lokayuktas has been constituted, beginning with

Orissa in 1971 however the power function and jurisdiction of lokayuktas are not uniform in some states it has been applicable to all the elected representatives including the chief minister ,however the powers, function and jurisdiction of lokayuktas are not uniform in the country in some states it has been applicable to all the elected representatives including the chief minister, in some other state legislations have been deliberately kept out of his purview often lacunae have not been provided with their independent investigative machinery making them dependent on the government agencies, which leaves enough scope for the politician and bureaucrats to tinker with the process of investigation.

India has travelled a long way since the independence in 1947 and its standerdaas is the status of an "emerging power" despite several changes and challenges from within her polity, arising from her unique charter as a sub-continental multilingual entity, several constraining her ability, Indian has managed to exhibit her Prowers, whenever it required. and the twentieth century has witnessed phenomenal growth in the powers and functions of the state, this has been mainly due to the emergence of the welfare state, which envisaged state intervention in an effort to bring about a just social order and in this endeavour, a strong and stable administration in proper channel is desirous and to correct administration faults, we have legal remedies that are available to the individual against the illegal actions of the administration. These remedies in helping preventing the recurrence of an illegality, however they do not provide full redress to the aggrieved individual, on the other hand to control and mitigate administrative fault the concept of ombudsman brought into practice and many countries of the world have established it to correct administrative lawlessness.

An ombudsman or his equivalent has been a standard part of the machinery of any modern government in the 21<sup>st</sup> century almost all countries have witnessed a change from Laissez-faire to regulation under the weight of new economic policy state has assumed the role of facilitator, regulator and enabler therefore the chance of friction between the government and

private citizen have multiplied manifold, in this circumstances in the name of development and progress individual justice against administrative faults may slip into the low visibility zone, therefore the importance of an institution like an ombudsman to protect the 'little man' against administrative faults by keeping the administration on rails cannot be overemphasized.

### **OMBUDSMAN IN OTHER COUNTRIES**

It is an anti-corruption authority who represents the public interest, the functionary is called by different names in different countries its power and functions also vary, in Scandinavian countries [Sweden Denmark Finland Norway] he is called 'ombudsman' he can take cognizance of the citizen's grievance by either directly receiving complaints from the public or suo moto on the basis of information provided by the interested persons or from newspapers etc. However in UK the functionary known as the parliamentary commissioner can receive complaints only through members of parliament, the ombudsman can investigate a complaint by themselves or through any public or private agency after investigation in Sweden and Finland the ombudsman has the power to prosecute erring public servant, whereas in Denmark he can only order prosecution the strength of ombudsman lies in the publicity attached to the office, in Sweden and Finland ombudsman can also supervise the courts, in other countries their authority is only over the non-judicial public servants and in almost all the case they mainly deal with complaints relating to both corruption and mal administration

### **DEVELOPMENT IN INDIA**

Needless to say that the need to establish an ombudsman system is no less intense in India than other countries having the same system for the consideration which led to the creation of ombudsman in those countries exist in ample measure in India as well, administrative delay and discourtesy are proverbial therefore close supervision over the administration for redressal of grievances become essential.

### **JOURNEY OF ESTABLISHING LOKPAL**

lokpal is an anti-corruption authority or ombudsman it is an institution set up to enquire into the allegations of corruption against functionaries the term lokpal is derived from sanskrit word 'lokapala' means caretaker of people and the concept of ombudsman is borrowed from Sweden.

M C Setalvad in his speech at the all india lawyer's conference held in 1962, suggested the idea of having a institution similar that of an 'ombudsman', the idea was extensively investigated by the administrative reforms committee and a definite suggestion was placed before the government in its interim report dated oct 14<sup>th</sup> 196 on the basis of the recommendation the government prepared the lokpal and lokayuktas bill 1968, and introduced it in parliament, but eventually it was allowed to lapse. in 1971 again an attempt was made and the bill as emerged from the joint select committee of parliament was to come for the consideration of the house in the 1979 monsoon session but because of the resignation of prime minister morarjidesai, the session was adjourned sine die, in 1985 an other attempt to introduce lokpal bill was made which restricted to offences punishable under Indian penal code, this bill drew violent protests from opposition and hence it was withdrawn by the government on the ground that its jurisdictional reach is highly limited, in 1989 and 1993 another lokpal bill was introduced but this bill also could not see the light of day another attempt for establishing of lokpal at center was made on august 3, 1998 when a fresh lokpal bill was introduced in the parliament this also could not be passed because of controversy regarding the inclusion of prime minister within the jurisdiction of lokpal, in 2003 lokpal bill was again introduced in parliament and did not see the light of day, new bill again introduced in 2005, this bill included prime minister also within the orbit of the bill though it is floating around for over five decades now it finally got shape with the passing of the lokpal and lokayuktas act 2013.

In pursuance of the effort to constitute a mechanism for dealing with complaints on corruption against public functionaries including high places, the government constituted a joint drafting committee on

8<sup>th</sup> april 2011 to draft a lokpal bill india is committed to pursue the policy of zero tolerance against corruption and india ratified the United Nations Convention Against Corruption by deposit of Instrument of Ratification on 9<sup>th</sup> may 2011, the convention inter alia envisages that state parties ensure measures in the domestic law for criminalization of offences relating to bribery, and put in place an effective mechanism for its enforcement, the obligation of the convention with reference to india have come into force with effect from 8<sup>th</sup> june 2011 as policy of zero tolerance against corruption, the bill seeks to establish in the country and in 2013 the lokpal and lokayuktas act was passed and its salient features are as follows.

1. There should be lokpal at the center and lokayuktas for states.
2. Lokpal shall consist of a chairperson and a maximum of 8 members of which 50% shall be judicial members.
3. Fifty percent of members of lokpal shall be from SC/ST/OBC's and minorities and women.
4. The selection of chairperson and other members of lokpal shall be through a selection committee, speaker of loksabha leader of opposition in the loksabha, chief justice of india or a sitting judge of supreme court nominated by the president of india, on the basis of recommendation of the first four members of the selection committee.
5. Prime minister has been brought under the purview of the lokpal.
6. Lokpal's jurisdiction covers all categories of public servants.
7. All entities receiving donations from foreign sources in the context of FCRA Act in excess of rs 10 lacs per year are brought under the jurisdiction of lokpal.
8. Provides adequate protection for honest and upright public servants.
9. Lokpal will have power of superintendence and direction over any investigating agency including CBI for cases referred to them by lokpal.

10. The bill also incorporates provisions for attachment and confiscation of property acquired by corrupt means even while prosecution is pending.
11. The bill lays down clear time lines for preliminary enquire and investigation and trail towards this end, it provides for setting up of special courts.
12. Transfer of officers of CBI investigating cases referred by lokpal with approval of lokpal.

### **WHEN WILL GOVERNMENT OPERATIONALISE THE LOKPAL LAW**

Failure to implement the lokpal law by the government is an indication how the party is reneging with impunity on its poll promise of corruption free india, a lack of will on the part of the government to implement the anti-corruption law can be inferred from its various actions and inactions, with the government refusal to recognize anyone as the leader of the opposition [LOP] after the general election in 2014, the appointment of the lokpal became as immediate causality as the selection committee of lokpal includes the recognized LOP and the law was thus diluted even before it could be operationalised, the lokpal amendment Act 2016 did away with the statutory requirement of public servant to disclose the assets of their spouses and dependant, children provided for under the original law, in principal act it was mandatory declaration of assets and liabilities by public servant within 30 days of entering office, now it has been replaced that a public servant will be required to declare his assets and liabilities, however the form and manner of making such a declaration will be prescribed by the central government all these actions of government clearly indicates the unwillingness to operationalise strong anti-corruption institution at center.

### **MAGNITUDE OF CORRUPTION AND NEED FOR ESTABLISHING OF LOKPAL;**

There is a revolution in India an anti-corruption wave is growing within society in recent years people from all sector have said 'enough is enough'-

today corruption is no shame and everything has a price. Tehlka live video tapes have proved the point those who are caught called corrupt while all bathe in the same tub, welfare of the country slide into oblivion and the people who lived in poverty before independence live in destitute now, since all most all in the system are benefited personally no one questions the other, it is a total nexus from top to bottom even the peon makes an extra buck from the visitors in the public offices, everybody has his value your file gets misplaced or its paper are lost, one who locks the almirah or the receipt clerk who receives mail all are important now corruption is a part of our national character and a way of life, we are in indifferent society today, callous and self-interested, having long shed our originality, we shall shed blood and sweat for the nation and take the nation for prosperity sounds like hollow slogans, that we probably chanted in our childhood there is a total drift in our thinking and working, and welfare of the country is a long forgotten ,there are laws bye -laws rules regulations which the public servants and others would interpret to their advantage and all this makes a bigger buck for them, there is no difference between them and extortionist, one robs at the gun point, the other with his power and authority in the broad day light, while the extortionist robs only an individual our bureaucracy and polity have been robbing the whole nation.

A recent survey by Transparency International [TI] an anti-corruption global society organization states that India has the highest bribery rate among the sixteen Asia Pacific countries surveyed nearly seven in ten people who accessed public services in India had paid a bribe the biggest economy in the region has a lot to do in terms of fighting corruption ,nearly almost all those surveyed said corruption has increased over the past three decades in other words-people with limited resources are further disempowered by an additional hurdle in accessing public service through having to pay bribes and no access to strong redress mechanism are main reasons behind corruption.

Now we hear of alarming rise in cases of scandals in daily lives like in issuing of visas, selection of cricketers and appointment of candidates for public

service, leakage of question papers of competition and entrance exams, issuance of licenses and other etc,

Seemingly the whole country is gradually adopting to perverted attitudes in its actions and deeds this retarded the progress corruption and nepotism are offshoots of a weak governance, its wrong policies and unwillingness to implement strong laws, irresponsibility had indeed become a characteristic of administration in India.

## **CONCLUSION**

Today the issue that confronts India are in a strikingly different way everything is debated and nothing gets done, we must fight the causes rather than its effects, no other measure whatsoever can bring any reform on this front putting a bucket below a leaking roof is no solution one must plug the holes in the roof.

We do not need ornamental statutes we need to have practical solutions to the problems we face, we have succeeded in enacting laws which are good in papers but not as for as implementation goes, so with the result we have not made much progress at all and the ground reality for victims of corruption and administrative faults remains the same where access to justice is extreme difficult.

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## **CONFLICT OF INTEREST**

We declare that we have no conflict of interest.

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